

**Harpwell Planning Board Meeting
Minutes of June 19, 2002 page one of four**

Attendance: James Henderson-Chairman, John Papacosma-Vice-Chairman, Howard Nannen, Don Rogers, Dorothy D. Carrier, Noel Musson- Planner, Tony Dater- Interim Planner, Karen OConnell-Recording Secretary. Two newly appointed Associate members were unable to attend.

The meeting had been advertised in the Times Record and was recorded. The TV Studio was not available and a notice was left for the public about the change to the Town Hall conference room. Chairman Henderson called the meeting to order at 6:48 P.M. reviewed the agenda and introduced above members and staff. Henderson led the pledge of allegiance.

Election of Board Officers: Jim Henderson noted it was the appropriate date to elect Board Officers. Jim explained that a change in officers can be refreshing for the Board. Elections were held using a secret ballot which was tallied by recording secretary. The following Board Officers were elected by simple majority: Jim Henderson elected as Chairperson, John Papacosma elected as Vice Chairperson and Dorothy Dee Carrier elected as Board Secretary. Jim Henderson thanked the Board for their confidence and indicated he would be able to serve just one more year.

Notice of Decision: The Board held a brief procedural discussion regarding the timing of the notice of decision to applicants. Board members agreed applicants could receive a notice of a approved decision a few days after the meeting rather than waiting for the formal approval of the minutes as the board is approving the document (Notice of Decision) itself.

Approval of Minutes:

The minutes of the April 30th Henry Site Visit were approved as drafted. (Motion by Carrier and Papacosma seconded- Carried 5-0).

The minutes of the April 17, 2002 already approved were noted to have a typo to be corrected.

The minutes of May 15, 2002 were approved with one correction. (Motion by Carrier and seconded by Rogers - Carried 5--0)

02-4-1 Kathryn Henry, Approval of Land Use in Shoreland Zone and Reconstruction of Non-Conforming Structure Shoreland Residential on the shore , Tax Map 11-20, 20 Tryon Rd. Ext., (Return from 4/17/02 Meeting) Jim Henderson indicated there was new information from the Codes Office/ Planning as to how the proposed construction can be situated and therefore Henry has presented a revised application to the Board. Henderson reminded the Board that the concern was whether the application met the standards for an exception. Because of the 50% demolition, the Board has to determine if the applicant conforms to the setbacks to the greatest practical extent. The board must determine if it is practical to construct the building back beyond the 75 foot setback per Shoreland Ordinance 10.3.2.1. Henderson asked the applicant to address whether the structure could be built beyond the 75 foot setback.

Applicant presentation Henry indicated there are ledge issues at the site, the desire to preserve a 1910 chimney, and the issue that the house is structurally not in condition to rehabilitate, but must be rebuilt. Henry indicated they wanted to utilize the site as best as possible. She noted the 75 foot setback line on the first application was found to be incorrect but has been corrected and drawings have been modified /revised to account for this. Henry also indicated there is a letter from Codes indicating they meet all other pertinent regulations and thus the primary issue is whether it is most practical to rebuild in the current footprint. Henry indicated the big problem on the land is the ledge and they have only 7 feet more room to move the building back (before running into 25 foot rear setback) and would have to blast into the ledge which is risky with the septic and well interfering on either side. Henry indicated she was attempting to make good use of a difficult lot.

Board Discussion - Several Board members indicated they believed a smaller structure or rearranging the structure in a more horizontal manner behind the 75 foot line would be possible and would reduce the issues. Board members indicated it is difficult to reconcile the plan with the ordinance on 50% rebuild and the need to move the building beyond the 75 foot setback to the greatest extent possible. Also the Board discussed that some of the issue is that the applicants desire to use the lot in a more intensive

way when the intention of the ordinance is to reduce non conformance. The Board agreed the policy issue the Board needs to make a decision on is, does the rebuild meet setback to greatest practical extent and stated concerns about crowding larger houses on smaller lots. The ordinance allows 30% expansion but does not indicate further expansion on a nonconforming lot. Further the Board noted there are ledge issues all over Harpswell. Henry asked if it was possible to do a partial rebuild in stages, why can't it be allowed to do the most economical efficient one time rebuild. The Board indicated desire and esthetics do not drive Board decisions.

Abutter Comment - Mr Halliday raised concerns about the use of his deeded right of way for access to a garage. Chairman Henderson indicated the Board could not become involved in resolving the private issues between the parties and Mr. Halliday may need to talk to an attorney if he has concerns.

Board Discussion Continued - Carrier indicated it is feasible to do this construction in a manner that would move the cottage back. She indicated the design is impressive but feels if it was possible to scale down what was desired by the land owner, a structure could be constructed beyond the 75 foot setback and the Board's mission is to uphold Shoreland Zoning Ordinance. Rogers agreed with Carrier but felt the applicant is attempting the most practical use of the land. Dater asked about the potential to move the garage to another location. Rob Center as applicant indicated he is struggling with the wording greatest practical and greatest feasible. His issue is the expense involved in approaching the rebuild from the back end which would be feasible by Town rules. Papacosma indicated the Boards judgement is based to some extent on whether a reasonable home can be built within proper setbacks. Nannen indicated there is an issue of a non conforming lot and bigger houses on small lots close to the ocean raising issues of impact on ocean water quality..

Board Vote - Motion - The application of Kathryn Henry as presented does not meet the requirements of Shoreland Ordinances 10.3.2.1 and 10.3.2.2 to the most practical extent. (Motion by Papacosma and seconded by Nannen, Carried 4-1 with Rogers dissenting) Henderson indicated the applicants need to decide on the issue of appeal.

Abutter Halliday asked to be kept informed if there is an appeal and was informed that he could also contact Dawna Black to stay up to date on the process. Applicant Henry indicated she is considering an appeal.

02-6-1 Jeffrey and Elizabeth P. Hurd, Site Plan Review(expanding existing restaurant) Interior , Tax Map 48-98, Ellen Way, off Cundy's Harbor Rd.

Applicant Presentation - Jeffrey Hurd explained that the application before the Board was to move seating inside the restaurant . He was told by Roland Mayo he would need to upgrade his septic system and the plan for septic is completed. Dater indicated he is expanding the use of the restaurant. Henderson indicated Site Plan Review Subsection 4 of Section 3.1 - Expansion of an Existing Non Residential Use was the applicable ordinance. Papacosma clarified that seating was to be added inside and applicant Hurd confirmed this and explained it would be seasonal use.

Board Discussion of Site Plan Review Items - Henderson indicated the Board's responsibility was to determine if this change would result in too much adverse impact. Dater indicated he had reviewed the list of required items with the applicants and the submission requirements have been met. Carrier clarified that this applicant would be covered by the new ordinance. Carrier, Papacosma and Rogers indicated they had been at the site before. Board members clarified that there were originally 6 inside seats and 24 outside seats at picnic tables. Board members asked whether any outside seats would be eliminated and Hurd indicated he would not be eliminating any outside seats. The Board concluded that there would be approximately 60 seats total both outside and inside.

Henderson asked the Board to review the site plan review factors. Each factor was reviewed and discussed and the Board concluded that no building structural changes were occurring so very few changes were being made which would impact the majority of site plan review factors.

Those factors requiring more extensive discussion because there were impacts because of the expansion were reviewed as follows:

Parking - Dater noted that parking was adequate for the number of proposed seats . With approximately 60 seat total inside and out, the parking would need to accommodate 20 cars (3 persons per car). Papacosma clarified with applicant the amount of space that picnic tables occupied near parking area, with applicant Hurd explaining they occupied a corner but approximately 10,000 square feet remain for parking area. The customer parking spaces are not marked on the gravel and delivery vehicles are

directed to a specific side during active business hours to stay away from parked cars. The Board concluded the parking was more than adequate with a 10,000 square foot parking area with delivery vehicles being directed to the side and that several of the requirements are not applicable for this small site and do not apply.

Traffic /Access - The Board noted that the traveled way was 25 feet wide and that one question would be an increase in traffic. The Board discussed the amount of traffic coming in and out and concluded the traffic would be under 100 trips per day. Applicant Hurd explained patrons do not want to eat outside in the rain so they need to place seats inside.

Water Supply and Quality The Applicants explained they purchase Poland Spring Water for all drinking, coffee and lemonade. The septic system was discussed. Dater indicated that the Board may want to make it a condition of the approval that the Codes Office make a statement that the new leach field is sized to meet the number of customers for 60 seats. Nannen raised the issue of protection of the groundwater at the property line due to guidelines of site plan review. Applicants indicated they are using paper cups and do not have a dishwasher. Henderson indicated he in general would like to clarify for future purposes, whether HHE designs meet groundwater protection requirements. Dater indicated in other cases Board may want to do a plume study when there is a question especially in tighter situations, which this one does not appear to be.. Nannen indicated he would be interested in whether the Codes Office believes the septic design is adequate for the number of seats. The Board concluded this may be a condition. In reference to toxic waste, Dater indicated it is unlikely and in general restaurants do not release toxins.

Landscaping and Buffering - Elizabeth Doughty abutter indicated she has no objections but mentioned there are other homes abutting. The Hurds explained that they owned the adjacent property. Carrier indicated she would have concerns if abutting property was in varied ownership. Henderson and Nannen indicated that renter's esthetics and their safety should be considered as well. Hurd indicated that the headlights do not impact the neighbors but actually shine on their home. Other discussion took place regarding possible buffering of neighbors from road dust and use of calcium chloride as a dust control, but the Board indicated this was not something they could mandate. Nannen raised the issue of the Boards responsibility to control side effects and impact on neighbors and road capacity to accommodate increased traffic. The Board concluded there are many dirt roads in Harpswell and dust is always an issue.

Lighting - The Hurds indicated they want to place a light that would shine back on the storefront and the Board concluded as it would not shine out to cause a hazard to traffic it would not be problematic.

Disposal of Waste - The Board indicated they would add a condition that waste be handled through a licenced facility.

Flood Plain Management - The applicants demonstrate they are located outside the Flood Plain.

Abutter Comment - Mike Walsh Abutter raised several concerns. He indicated he wants to be sure the Town is following ordinances and that the water quality will be protected with septic design. He is concerned the hours of operation are increasing from 8:00 to 9:00 and adding more seats will increase traffic which increases dust and speeding problems near his home. He also has concern over the safety of his children playing in the road which is more or less his driveway. He is concerned regarding less peace in the neighborhood and about future expansion and possibility of a bar crowd coming in. Mr Walsh indicted the Hurds have put in a speeding sign (10 mph) but some people are respectful of it and some are not. Some customers go in and leave immediately increasing traffic. Mr. Bruce Doughty Abutter indicated he has no formal objection but wondered how the area evolved from a residential to a commercial use. Papacosma explained the Town has no interior zoning rules and it may be time for the community to take a serious look at this issue of interior zoning.

The Board discussed whether later hours might be an expansion of use which would require a return to the Board. This issue needs to be explored for general purposes by Codes. Rogers indicated the noise ordinance would require quiet after a certain hour which offers some protection to residents. Mr. Walsh indicated the Hurds keep a quiet establishment and it is primarily the issue of increased vehicles. Applicant Hurd indicated she did not believe she was expanding hours. Dater indicated the site plan ordinance does not address noise but does address adverse impact on neighbors.

Board Discussion and Vote - **Motion - The Board will accept the application as is. (Motion by Rogers and Carrier seconded)** . Board Discussion continued. Jim Henderson indicated the Board may or may not want to add conditions. Mr. Henderson continued through the 15 points of the Site Plan Review Ordinance and the Board agreed on the majority of points there was no effect or it did not apply because

many circumstances did not change on the site. The Board agreed that all points were met with a few specific items needing to be addressed to be noted in conditions.

Motion - There will be a condition (re: 15.11 and 15.12) that there will be confirmation from the Codes Office that the septic system design can meet the needs of projected 60 seats total (inside and outside seats) (Motion by Carrier seconded by Henderson - Carried 5-0) The Board noted that the HHE design form indicates 30 seats plus housing.

Nannen proposed a condition to minimize dust by application of calcium chloride or suitable alternative. Board members expressed concerns with this suggestion. Applicant Hurd expressed concern as he maintains the road and felt he was being penalized for certain persons driving too fast. Jim Henderson agreed with the principle raised by Nannen but was not certain the ordinance applied. There was no second and this recommendation was abandoned.

Motion - There will be a condition (re: 15.18) that a letter is required to confirm that there is adequate disposal of solid waste by a licenced disposal facility. (Motion by Carrier seconded by Papacosma - Carried 5-0)

Jim Henderson indicated that any expansion of the total number of hours would require a new application. Mr. Walsh indicated he was satisfied that the Board had reviewed and considered the elements of the application.

The Board then voted on the above motion to approve the application with the two above noted conditions (Carried 5-0)

Motion - The Chairman of the Board is authorized to issue the Notice of Decision in conformity with the above motion. (Motion by Carrier, seconded by Nannen - Carried 5-0)
(Motion by Carrier seconded by Nannen - Carried 5-0)

Mr. Henderson indicated the notice of decision would occur within the next week.

Amendment To By Laws - After brief discussion the following motion was made. **The Planning Board will limit application consideration to the 100 days from the date when the application is first formally considered on the agenda. (Motion by Nannen and seconded by Rogers - Carried 5-0)**

Upcoming Workshops and Meetings - Three meetings were discussed:

1. Wed. September 11 in Saco, Basic Workshop for Planning Boards and Boards of Appeals

Mr. Henderson asked if Noel Musson could see to arrangements. Interested in attending are Jim Henderson, John Papacosma and Howard Nannen. Mr. Henderson asked that Associates be contacted to see if they would want to attend.

2. RTAC Meeting June 26, at 6 P.M. Surveyors Group with MDOT This meeting is focusing on new regulations for road cuts and 250 setbacks in RP areas.

Henderson agreed to attend this mtg. in Augusta

3. Shoreland Zoning Ordinance monitoring June 26 6:30 -8:30 Fleet Bank in Brunswick Rich Baker will be speaking. John Papacosma and Howard Nannen are considering attending

Consideration of Minimum Requirements - This item is continued to next meeting as Noel Musson has some thoughts on this process.

Motion to Adjourn at 10:35 P.M. (Motion by Carrier seconded by Rogers, Carried 5-0)

Respectfully Submitted

Karen O'Connell, Recording Secretary